SUBJECT INDEX

	Page
Motion for Leave to File Brief as Amicus Curiae	1
Interest of Legal Aid Society of Alameda County	1
Issues and Relevance	2
Conclusion	3
Amicus Curiae Brief	4
Interest of Legal Aid Society of Alameda County	4
Summary of Argument	4
Argument	5
I. California's One Year AFDC Residence Requirement Has No Reasonable Relation to the Purpose of AFDC Legislation and Thus Constitutes a Denial of Equal Protection	5
II. California's One Year AFDC Residence Requirement Violates the Constitutionally Protected Right of Interstate Travel	12
Conclusion	16

TABLE OF AUTHORITIES CITED

Cases	Pages
Baggett v. Bullitt, 377 U.S. 360 (1964)	14
Edwards v. California, 314 U.S. 160 (1941)	5, 13
Flemming v. Nestor, 363 U.S. 603 (1960)	8
Green v. Department of Public Welfare, Civil Action No. 3349 (D.Del. 1967)	12
Harrell v. Tobriner, Civil Action No. 1497-67 (D.D.Col. 1967)	9, 11, 12
People v. Lyons, 374 Ill. 557, 30 N.E.2d 46, 51 (1940)	5, 12
Rinaldi v. Yeager, 384 U.S. 305 (1966)	10, 11
Sherbert v. Verner, 374 U.S. 398 (1963)	14

Statutes

California Welfare and Institutions Code:

Sec. 10000	6
Sec. 10001	6, 7, 13
Sec. 11004	7, 13
Sec. 11205	7
Sec. 11252	2, 5, 13
Sec. 12550	10
Sec. 17000	15
Sec. 17003	15
Sec. 17004	15
Secs. 17100-17104	15

United States Constitution

Fourteenth Amendment	9

OTHER AUTHORITIES

Pages

Alameda County Welfare Department, General Assistance Policies and Procedures Manual (1962) 15

California State Senate, Report of Fact Finding Committee on Labor and Welfare on "Aid to Needy Children" (1961) 13

Harvith, The Constitutionality of Residence Tests For General and Categorical Assistance Programs, 54 Calif. L. Rev. 567 (1966) 8, 12

Kasius, What Happens in a State Without Residence Requirements, in Residence Laws: Road Block to Human Welfare 18 (National Travelers Aid Assn. 1956) 11

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Wickenden, Lets Face Up to Restrictive Residence Laws, in Residence Laws: Road Block to Human Welfare 5 (National Travelers Aid Assn. 1956) 12

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 813

BERNARD SHAPIRO, Welfare Commissioner of Connecticut,
Appellant,

vs.

VIVIAN THOMPSON,
Appellee.

On Appeal from the United States District Court for the District of Connecticut

Motion for Leave to File Brief as Amicus Curiae on Behalf of Appellee

INTEREST OF THE LEGAL AID SOCIETY OF ALAMEDA COUNTY

The Legal Aid Society of Alameda County is a non-profit California corporation established in 1929 by members of the State Bar for the purpose of furnishing legal services to those residents of Alameda County who are unable to afford the services of private attorneys. The

Legal Aid Society has a staff of attorneys with training and practical experience in the law most relevant to low-income persons, including welfare law.

Attorneys on the staff of the Society represent many clients who have been denied payments under the Aid to Families with Dependent Children (AFDC) program in California by the operation of the durational residence requirement contained in California Welfare and Institutions Code Section 11252. We have challenged the statute in administrative proceedings on the identical grounds as in the instant case, and we intend to pursue the claims of our clients further in order to vindicate their rights. The position of the State of California in opposition to our actions will be identical to the position it asserts before this Court.

The Legal Aid Society wishes to file an *amicus curiae* brief in this case for the purpose of answering the arguments of *amicus curiae* State of California in support of California's durational residence requirement.

ISSUES AND RELEVANCE

In reply to the brief of the State of California, the Legal Aid Society will argue that California's residence requirement statute violates the equal protection clause of the fourteenth amendment to the United States Constitution even if the purpose of the statue is to protect the state treasury or to provide budgetary predictability. We will further argue that the California statute violates the constitutionally protected right of interstate travel.

Discussion of these issues is relevant to the instant case because the California and Connecticut statutes, although different in some respects, are basically similar, and a decision of the Court on the constitutionality of the Connecticut statute may well determine the constitutionality of the California statute.

CONCLUSION

For the reasons stated above, the Legal Aid Society respectfully moves the court to permit the filing of a brief as *amicus curiae* on behalf of appellee.

Respectfully submitted,

LEGAL AID SOCIETY OF ALAMEDA COUNTY

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Brief of Amicus Curiae in Support of Appellee

INTEREST OF THE LEGAL AID SOCIETY OF ALAMEDA COUNTY

The interest of the Legal Aid Society of Alameda County in this litigation has been set forth under this same cover in the Motion for Leave to File Brief as Amicus Curiae.

SUMMARY OF ARGUMENT

This brief will argue first that in light of the express purpose of the AFDC program to provide assistance to the needy, the one year residence requirement imposed by Cali-

fornia Welfare and Institutions Code Section 11252 creates an arbitrary classification, proscribed by the equal protection clause of the fourteenth amendment. It is further argued that even if the validity of the residence requirement is to be judged in light of the specific purposes suggested by the State of California, without consideration of the fundamental purpose of AFDC legislation, the requirement is unconstitutional because it is not rationally related to the suggested purposes.

Finally, the brief will argue that the intent and effect of the AFDC residence test is to deter the migration of indigents across state lines into California, and that the statute is therefore invalid on the additional ground that it violates the constitutionally protected right of interstate travel.

ARGUMENT

I. California's One Year AFDC Residence Requirement Has No Reasonable Relation to the Purpose of AFDC Legislation and Thus Constitutes a Denial of Equal Protection

In defense of its AFDC durational residence requirement contained in Welfare and Institutions Code Section 11252, the State of California asserts that the purpose of the statute is not the commonly stated, historical purpose of residence requirements—to place an economic barrier in the path of poor persons who wish to move to a particular state[1]—but rather to conserve public resources by limiting the number of persons eligible for AFDC in California and to enable the State to make a reliable, annual budget forecast of the number of persons who will be eligible for AFDC in a particular year. The State, however, has failed to consider the vital and primary purpose of AFDC legislation—to sustain members of the community who are in need. Cali-

1. See, *e.g.*, *People v. Lyons*, 374 Ill. 557, 30 N.E.2d 46, 51 (1940); *Edwards v. California*, 314 U.S. 160, 174 (1941).

fornia's AFDC residence requirement fails to meet the constitutional standard of equal protection because the classification it creates is arbitrary in light of this basic purpose.

The purpose of the State's AFDC program is set forth in a series of statutes beginning with Welfare and Institutions Code Section 10000, which states the general purpose of California welfare legislation:

> The purpose of this division [Division 9, entitled "Public Social Services" and including all AFDC legislation] is to provide for protection, care, and assistance to the people of the state in need thereof, and to promote the welfare and happiness of all of the people of the state by providing appropriate aid and services *to all of its needy and distressed.* It is the legislative intent that aid shall be administered and services provided prompty and humanely, with due regard for the preservation of family life, and without discrimination on account of race, national origin or ancestry, religion, or political affiliation; and that aid shall be so administered and services so provided as to encourage self-respect, self-reliance, and the desire to be a good citizen, useful to society. (Emphasis added)

Welfare and Institutions Code Section 10001, the statute immediately following, provides in part:

> The purposes of the public social services for which state grants-in-aid are made to counties are:
>
> (a) To provide on behalf of the general public, and within the limits of public resources, reasonable support and maintenance for needy and dependent families and persons.

The specific purpose of the AFDC program is set forth subsequently in Welfare and Institutions Code Section 11205:

> It is the object and purpose of this chapter [entitled "Aid to Families with Dependent Children"] to provide aid for children whose dependency is caused by circumstances defined in Sections 11250 and 11251

> [defining deprivation of parental support or care], to keep children in their own homes wherever possible, and to provide the best substitute for their own homes for those children who must be given foster care.
>
> Those engaged in the administration of aid under this chapter are responsible to the community for its effective, humane, and economical administration.
>
> It is the intent of the Legislature that the employment and self-maintenance of parents of needy children be encouraged to the maximum extent and that this chapter shall be administered in such a way that needy children and their parents will be encouraged and inspired to assist in their own maintenance. The department shall take all steps necessary to implement this section.

The emphasis is overwhelmingly upon the provision of aid to the needy people of the state, rather than upon the preservation of public funds. Indeed, the reference in Section 10001 to the "limits of public resources" is no basis at all for inferring that the purpose of the program set up by the legislature is to save money; it is merely a direction to the administrator to operate within his budget in accomplishing the desired social objective. The State of California, emphasizing this one phrase in Section 10001, has lost sight of the fundamental purpose of AFDC—to insure the survival and encourage the self-maintenance of the poor.[2]

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2. The State has also misconstrued the purpose of AFDC by emphasizing the "safeguarding of public funds", a phrase from the introductory sentence of Section 11004. That section in full deals with the conditions and methods for the collection from welfare recipients of prior overpayments; it should not be construed as the purpose by which the constitutionality of the residence requirement is to be determined.

In addition, the State has apparently overlooked Section 11205, quoted *supra*, pp. 6-7, which clearly states the purpose of the AFDC chapter and contains no reference to conserving public resources.

The State has apparently lost sight of the logic of the matter as well. On page 8 of its *amicus curiae* brief the following statements are made:

> There is no requirement in the Constitution that mandates a state to afford relief to all or any of its needy residents regardless of the period of their residence. That this succor is socially desirable few would deny. That California has an obligation to supply unpolluted air and water, adequate schools, highways, hospitals, protective services to all of its citizens none would deny. But it does not follow that the non-discriminatory residence requirements of California law amount to an unreasonable classification within the meaning of the Equal Protection Clause.

But of course it does follow. The "socially desirable succor" to which the State alludes is the very survival of a significant number of people in our society. A family deprived of minimal food, clothing and shelter finds it difficult to take advantage of less essential services provided by the state. The fundamental nature of the legislation involved in this case[3] is not to be obscured by vague references to fiscal and budgetary convenience. As a federal court has recently stated in a case considering the constitutionality of welfare residence laws:

> This national movement toward assistance where assistance is needed, and the human terms of the problem, permit the court somewhat greater latitude in deciding

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3. The essential nature of the payments provided under welfare categorical aid programs distinguishes the residence requirement cases from *Flemming v. Nestor*, 363 U.S. 603, 611 (1960), which upheld an allegedly arbitrary termination of old-age insurance benefits under the Social Security Act. For a discussion of other distinctions between *Flemming* and the residence cases, see Harvith, the Constitutionality of Residence Tests for General and Categorical Assistance Programs, 54 Calif. L. Rev. 567, 575-579 (1966).

> that this difference in the treatment of those in our midst who are in need amounts to unequal protection of the laws than if the treatment were with respect to some matter less critical to their living conditions. *Harrell v. Tobriner,* Civil Action 1497-67 (D.D. Col. 1967), at pp. 21-22.

In fact, it may well be that the Constitution does mandate a right of survival as a condition precedent to the enjoyment of the other basic rights it establishes.

In light of this fundamental purpose of AFDC legislation—to sustain members of the community who are in need—a statute which arbitrarily singles out a certain class of the needy for total exclusion denies to that class the equal protection of the laws and thereby contravenes the fourteenth amendment to the Constitution.

Even if it were to be assumed that conservation of public resources and budgetary predictability, in and of themselves, are valid and properly conceived purposes for welfare legislation, a classification which excludes persons who have recently arrived in California has no rational relationship to either of those purposes and is therefore constitutionally impermissible. In an attempt to conserve AFDC funds, California can no more justify the exclusion of residents who have not lived in California for one year than it could justify the exclusion of residents whose surnames begin with a particular letter of the alphabet. The State argues that it has a rational basis for excluding recently arrived residents because it makes possible the prediction of the number of persons who will be eligible for AFDC each year and thereby facilitates the planning of yearly budgets. Whether the State is contending that the need for budgetary predictability justifies the classification as a method of saving money or that budgetary pre-

dictability is an adequate justification of the residence requirement independent of the conservation of public funds, the premise of either argument fails because there is no basis for the assertion that the residence requirement furthers predictability. No connection is apparent, and the State has said nothing to enlighten us on this point.[4] Welfare statutes contain complex eligibility requirements, of which residence is only one, and it seems very doubtful that changing this one requirement would make any significant difference in the State's ability to plan its budget. Several states, including New York, have no residence requirements, and they seem to be able to forecast their yearly expenses reasonably well. California itself has no residence requirement for assistance under the Aid to the Blind program (see Welfare and Institutions Code Section 12550) and has been able to plan adequately.

This Court has already held that where the purpose of a statute is to conserve public funds, the statute may not discriminate arbitrarily in achieving that purpose. In *Rinaldi v. Yeager*, 384 U.S. 305 (1966), a county attempted to obtain reimbursement from a prisoner's earnings for the transcript furnished to him in connection with his unsuccessful *in forma pauperis* appeal. The state statute requiring repayment did not, however, apply to unsuccessful appellants who received a fine, a suspended sentence, or who had been placed on probation; it applied only to unsuccessful appellants confined in institutions. The Court made the assumption that the legislature could validly provide for replenishing a county treasure from the pockets of those who had

4. In light of its assertion that the residence test does not deter migration of the poor, the State could not be arguing here that the abolition of the residence test would upset budgetary predictability because of a sudden insurge of indigents.

directly benefited from county expenditures, but held that appellant had been denied the equal protection of the laws because there was no rationality in the nature of the class singled out by the statute. The differences between the class required to repay and those not so required were unrelated to the fiscal objective of the statute and were only minimally related to any administrative convenience. The classification created by the California AFDC requirement is likewise unrelated to any fiscal objective and unjustified by administrative (budgetary) convenience; in fact it is considerably more invidious than the classification in *Rinaldi* because poor persons who have recently arrived in California have needs which are not merely equal to, but greater than those of poor persons who have lived in the state for over a year.[5]

Moreover, it is highly questionable whether the AFDC residence requirement accomplishes its proclaimed purpose of preserving state finances. The immediate, apparent saving is quite small. In New York in 1955 about two percent of the total public assistance caseload were persons who had not resided in the state a full year.[6] As the court points out and documents in *Harrell v. Tobriner,* Civil Action No. 1497-67 (D.D.Col. 1967) at pp. 12-13, 19, the administrative expenses of investigating cases and enforcing residence laws and the long term social costs of family separation, malnutrition, and juvenile crime are probably much greater than the apparent saving.

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5. Examples of such needs are rental and utility deposits. Furthermore it takes some time for a newly arrived family to acquaint itself with the most economical methods of shopping for food, clothing, and other items.

6. Kasius, What Happens in a State Without Residence Requirements, in Residence Laws: Road Block to Human Welfare 18, 19-20 (National Travelers Aid Association 1956).

Thus the classification created by the statute is arbitrary even in light of the purposes suggested by the State.

II. California's One Year AFDC Residence Requirement Violates the Constitutionally Protected Right of Interstate Travel

The State of California apparently acknowledges that a state statute which does not directly foreclose a citizen's right of interstate travel, but still discourages, burdens, or has a chilling effect upon the exercise of that right may violate the Constitution. The State argues, however, that its AFDC durational residence requirement is not proscribed by the Constitution because it is neither the purpose nor the effect of the statute to discourage migration of indigents to California.

The most commonly stated and accepted purpose of state welfare residence requirements is either to limit the migration of all needy persons or, in the candid words of the Supreme Court of Illinois, to prevent the state from becoming "a haven of the transient poor seeking the most advantageous statutory provisions granted those requiring assistance."[7] The State of Connecticut has acknowledged such a purpose in the instant case. The State of Delaware and the District of Columbia have frankly done the same.[8] Commentators are in agreement as the purpose of these statutes.[9] Historical analysis, going back to the Elizabethan

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7. *People v. Lyons*, 374 Ill. 557, 30 N.E.2d 46, 51 (1940).

8. See *Green v. Department of Public Welfare*, Civil Action No. 3349 (D. Del. 1967); *Harrell v. Tobriner*, Civil Action No. 1497-67 (D.D. Col. 1967).

9. See, *e.g.*, Wickenden, Let's Face Up to Restrictive Residence Laws, in Residence Laws: Road Block to Human Welfare 5, 6 (National Travelers Aid Association 1956); Harvith, the Constitutionality of Residence Tests for General and Categorical Assistance Programs, 54 Calif. L. Rev. 567, 615 (1966).

Poor Law, indicates that the purpose of welfare residence or settlement laws is to "seal off" poverty in a particular locality.[10] Yet the State of California now asserts without any documentation,[11] that its AFDC residence test is by no means intended to keep the poor out of California. California legislators appear to be of a different view. The Report of the Senate Fact Finding Committee on Labor and Welfare of 1961 entitled "Aid to Needy Children" (the former designation of the AFDC program) states at p. 107:

> The committee recommends that no action be taken at this time by the legislature to eliminate existing State residence requirements. Again, there are no reliable cost estimates available and, furthermore, the high standard of aid paid relative to that of other states would undoubtedly result in some influx of persons seeking such assistance. Additionally, the subject of State eligibility requirements has been recommended for study by the United States Department of Health, Education, and Welfare. This is a promising undertaking because the federal government could do much to equalize ADC aid payments among various states,

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10. See the discussion in the majority opinion in *Edwards v. California*, 314 U.S. 160, 174 (1941); tenBroek, California's Dual System of Family Law: Its Origin, Development, and Present Status, 16 Stan. L. Rev. 257, 264-265, 900 (1964), 17 Stan. L. Rev. 614 (1965).

11. The only indications of legislative purpose upon which California relies are phrases in Welfare and Institutions Code Sections 10001(a) and 11004 which refer to the conservation of public funds. Section 10001(a) is part of the general "purpose" provisions for all of California's categorical aid programs, and Section 11004 deals with the collection of overpayments; neither section purports to state the purpose of the challenged residence requirement found in Section 11252. And, as discussed on p. 7, *supra*, references to public resources are merely directions to the administrator of the program, not statements of purpose. Finally, the phrases referring to the conservation of funds are entirely inconclusive on the question of whether the purpose of the residence test is to save money by excluding an arbitrary category of residents or to save money by discouraging the poor from entering California.

and thereby enable them to consider elimination of residence requirements.

In light of this evidence and in light of the flimsiness of the alternative purposes suggested by the State of California and discussed earlier in this brief, it must be concluded that the primary purpose of California's AFDC residence requirement is to deter the migration of indigents.

Furthermore, the natural and likely effects of California's AFDC residence requirement are to prevent the migration of some needy persons who would otherwise come to California and to put considerable economic pressure on those who actually arrive in the State, thus forestalling the exercise of the right of interstate travel in some instances and burdening the exercise of that right in other instances. The Court has not required proof of the effects of a statute on the exercise of constitutionally protected freedoms when the likely effect of a challenged statute is apparent. In *Baggett v. Bullett*, 377 U.S. 360, 372-374 (1964), the Court reasoned that the likely effect of requiring state teachers to take a vague loyalty oath as a condition precedent to employment would be to cause them to "steer far wider of the unlawful zone [of speech] . . . than if the boundaries of the forbidden areas were clearly marked." And in *Sherbert v. Verner*, 374 U.S. 398, 403-404 (1963), it was held that the disqualification of a Seventh-day Adventist from unemployment compensation benefits because of her refusal to accept work on Saturday, the Sabbath Day of her faith, imposed a burden upon the free exercise of her religion. Although there was no criminal sanction directly compelling her to work a six-day week, the Court regarded as equivalent the indirect pressure brought to bear against her by compelling a choice between her religion and the benefits. Similarly, while the plaintiffs in residence require-

ment cases in current litigation were not actually prevented from migrating, they are subject to constant economic pressure to forego their right to set up residence in the state of their choice and return to the state from which they came.[12]

When a statute's intended, chilling effect upon a constitutional right is apparent, as here, the burden shifts to the state to demonstrate that the statute does not in fact have the effect imputed to it. The State of California, apparently recognizing this burden, has attempted to demonstate that its residence requirement does not have any proscribed effect on the right to travel by quoting statistics which indicate that over one million persons migrated to the state between 1955 and 1960 and that there has been a 25 percent increase in California's population since 1960. (*Amicus* brief, p. 9) Neither figure demonstrates anything concerning the number of *needy* persons who have come to California in recent years or, more significantly, the number who have been prevented from coming. Moreover, California has not even attempted to show that the residence requirement does not have a burdensome effect upon poor people once they arrive in the State. The State has not

12. The provisions of California's County Aid and Relief to Indigents (commonly referred to as General Assistance) further reinforce the pressure upon indigent migrants to return to their state of origin. The State requires each county to support its poor residents who are unable to qualify for categorical assistance (*e.g.*, AFDC), but imposes a three year state residence requirement on such support. The State permits the counties to give "nonresident" indigents emergency relief and to pay the expenses necessary to transport them to another state when possible. California Welfare and Institutions Code Secs. 17000, 17003, 17004, 17100-17104. Usually, the only emergency relief granted by counties to indigents who do not meet the General Assistance three year residence requirement is contingent upon the indigent's promise to return to the state from which he came. See, *e.g.*, General Assistance Policies and Procedures Manual of the Alameda County Welfare Department 9-13 (1962).

and cannot overcome the logical inference of the effect of its residence test.

Thus the purpose and the effect of California's AFDC residence requirement is to prevent and discourage poor persons from traveling to California and taking up residence, and the requirement is invalid under the Constitution.

CONCLUSION

The California AFDC residence requirement has no more claim to consitutional validity than the Connecticut AFDC residence requirement. In determining validity under the equal protection clause, both statutes must be viewed in light of the fundamental purpose of AFDC legislation. Even if judged in light of intended fiscal savings and administrative convenience, they are still arbitrary. The real legislative intent and effect of these statutes, however, is to discourage indigents from coming to the state. Therefore, both the California and the Connecticut residence requirement violate the constitutional right of interstate travel as well as the right to the equal protection of the laws.

Respectfully submitted,

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